



## **DEPARTMENT OF AGRICULTURE**

### **Rural Utilities Service**

#### **7 CFR Part 1784**

#### **RIN 0572-AC28**

### **Section 306D Water Systems for Rural and Native Villages in Alaska**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS), an Agency of the United States Department of Agriculture (USDA), proposes to modify its existing regulations and establish a separate regulation for making grants to rural or Native Alaskan Villages under the Rural Alaska Village Grant (RAVG) Program. The existing RAVG regulation (7 CFR 1780.49) will be relocated to its own section and modified to conform with streamlined processes established through a Memorandum of Understanding among USDA, RUS; The United States Department of Health and Human Services, Indian Health Service (IHS); The State of Alaska, Department of Environmental Conservation (DEC); and the Alaska Native Tribal Health Consortium (ANTHC). The grants will be provided directly to a rural or Native Alaskan Village or jointly with either DEC or ANTHC for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those Villages through removal of dire sanitation conditions.

**DATES:** Comments must be submitted by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments by either of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting comments.
- Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, SW, STOP 1522, Room 5159, Washington, DC 20250-1522.

Additional information about the Agency and its programs is available on the Internet at [http://www.rurdev.usda.gov/UWEP\\_HomePage.html](http://www.rurdev.usda.gov/UWEP_HomePage.html).

**FOR FURTHER INFORMATION CONTACT:** Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1548, Room 5147, Washington, DC 20250-1590. Telephone number: (202) 690-2670, Facsimile: (202) 720-0718.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that

are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

### **Regulatory Flexibility Act Certification**

Pursuant to 5 U.S.C. § 553(a) (2), this proposed rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. § 551 et seq.), including the requirement to provide prior notice and an opportunity for public comment. Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. § 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) are inapplicable.

### **Information Collection and Recordkeeping Requirements**

The information collection and recordkeeping requirements contained in this rule will not be effective until approved by the Office of Management and Budget (OMB), subject to the submission of a paperwork package for which the Agency intends to request approval from OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). RUS invites comments, on any aspect of this collection of information including suggestions for reducing the burden. Send questions or comments regarding this information collection to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Washington, D.C. 20250-152, FAX: (202)720-8435.

Organizations applying for the RAVG program must submit an application which includes an application form, various other forms, certifications, and supplemental information. RUS will use the information collected from applicants, borrowers, and consultants to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the RAVG program.

The applicant will submit the following information:

**SF- 424, "Application for Federal Assistance."**

Applicants use this form as a required cover sheet for applications submitted for RAVG grants. The application is an official form required for all Federal grants and requests basic information about the applicant and the proposed project.

**Form - RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans"**

Applicants read and sign this certification. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

**RD 400-1, "Equal Opportunity Agreement"**

Applicants read and sign these forms to assure RUS that they agree to and will comply with Title VI of the Civil Rights Act of 1964, and the Equal Opportunity Clause under Executive Order 11246 of September 24, 1965.

**RD 442-7 “Operating Budget”**

All applicants use the form to project income and expense items and a complete cash flow through the first full year of operations after they use the loan proceeds. These projections are necessary in determining the source and reliability of the projected income and the adequacy of resources to repay the loan in a timely manner, operate and maintain the facility, and maintain adequate reserves.

**Written - Certification regarding prohibited tying arrangements.**

Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

**Form AD-1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.”**

USDA regulations published at 2 CFR Parts 180 and 417 implement the government-wide debarment and suspension system for USDA’s non-procurement transactions.

Applicants for RAVG grants are required to provide certification under these regulations.

Form AD-1047 may also be used to obtain the required certification.

**Form AD-1048, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters -Lower Tier Covered Transactions.”**

Form AD-1048 will be signed by the applicant’s suppliers, auditors, contractors, etc., and retained by the applicant in their files.

**Form AD-1049, “Certification Regarding Drug-Free Workplace Requirements  
(Grants) Alternative I - for Grantees Other Than Individuals.”**

USDA regulations published at 2 CFR Parts 180 and 417 implement the Drug-Free Workplace Act of 1988, which requires that grant recipients agree that they will maintain a drug-free workplace. Applicants are required to provide certification under these regulations. Form AD-1049 may also be used to obtain the required certification.

**Written - Land Surveyors Certification and Opinion of Right of Way**

The document will include legal descriptions of lands created for parcels and shown in referenced documents are true and correct.

**Written - Civil Rights Compliance Assurance Self Certification**

Applicant certifies that it will comply with Title VI of the Civil Rights Act of 1964. The certification can be a written self-certification statement.

**Written - Approved Business Plan**

The business plan will include the resolution adopting the plan and outline the proposed O&M costs, rate structures, short-lived asset rate schedule and associated materials.

**Written - Preliminary Engineering Report**

Applicants must submit a preliminary engineering report (PER) prepared by a qualified engineer. The PER indicates areas to be served, scope and need of the project, cost estimate, annual operating expenses, etc. This report is necessary for RUS to determine project feasibility.

**Written - Supporting Documentation**

Applicants must provide documentation of legal organization and authority to borrow funds, construct, operate, manage the facility, etc. The documentation may include articles of incorporation, certificate of incorporation and good standing, bylaws, rules, and organizational minutes. Applicants also must provide financial information such as financial statements, audits, or existing debt instruments. This information is necessary for RUS to determine an organization's legal existence, authority to perform certain functions, and financial capacity to borrow funds.

**Written - Grant Agreement**

The Grant Agreement sets forth the terms and conditions under which the applicant receives a RUS grant. Applicants and RUS must execute the document before RUS disburses grant funds.

**Written - Audits Based on Federal Assistance**

Grantees must submit audited financial statements annually in accordance with Generally Accepted Government Auditing Standards (GAGAS). The audit must comply with the requirements of OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations" or Water and Waste Disposal audit requirements. The requirements for submitting an audit report under OMB Circular A-133 are based on the total amount of Federal financial assistance expended during a grantee's fiscal year from all Federal sources. Grantees that expend \$500,000 or more in a year in Federal awards must have a single audit conducted for that year under OMB Circular A-133. Those that expend less than \$500,000 in Federal awards and have an outstanding RUS loan balance equal to or greater than \$1,000,000 must submit an audit in accordance with Water and

Waste Disposal audit requirements. Grantees expending less than \$500,000 in Federal assistance and having a RUS loan balance less than \$1,000,000 may submit a management report instead of an audit report. RUS will designate the type of audit grantees must submit.

### **Written - Management Reports**

All grantees must furnish management reports that will provide management a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. This requirement is necessary to help assure that the facility will be properly managed and to protect the financial interest of the Government.

The following information/forms are collected and accounted for under other collection packages:

#### **SF-424C, “Budget Information--Construction Programs.”**

Applicants estimate costs and expenses for the grant project. The form also provides information on matching funds. This form is submitted as part of the pre-application and if the project is selected, as part of the formal application.

#### **SF-424D, “Assurances-Construction Programs”**

Applicants will read and sign this form to indicate the organization’s intent to comply with the laws, regulations, and policies to which a grant is subject.

#### **SF-LLL, “Disclosure of Lobbying Activities”**

Applicant will complete all items on the form that apply for both the initial filing and material change report.



**RD 442-3 “Balance Sheet”**

All applicants and borrowers use this form to present their assets, liabilities, and net worth. Borrowers whose gross annual income is less than \$100,000 may use it at year-end. This form is necessary for all applicants, who prepare it once to present a comparative balance sheet for the most current and prior years. .

**RD 442-2 “Statement of Budget, Income and Equity”**

This form serves a dual purpose as a budget and an income and expense statement. RUS generally requires new borrowers to submit it each quarter for the first 3 years so RUS can monitor financial progress in the early years of operation. The report is then discontinued for those borrowers that are progressing satisfactorily. As a budget report, borrowers must submit their budget estimates before the beginning of each fiscal year. In these cases only, column three is to be completed. Borrowers, at their option, may also use this form as a year-end income and expense statement when audited financial statements are not prepared.

**RD 442-22 “Opinion of Counsel Regarding Right of Way”**

Applicants and their attorneys may use this form in obtaining continuous and adequate rights-of-way and interest in land needed for the construction, operation, and maintenance of a facility. This form is.

**RD 1942-19 “Agreement for Engineering Services”**

Applicants must contract for the professional services rendered from an engineer, attorney, bond counsel, accountant, auditor, appraiser, or financial advisor. Contracts or other forms of agreement for services necessary for project planning and development are

subject to RUS concurrence. Applicants must submit them to RUS for review and concurrence to ensure the needed services will be available at a reasonable cost.

**RD 400-4, “Assurance Agreement.”**

Applicants read and sign these forms to assure RUS that they agree to and will comply with Title VI of the Civil Rights Act of 1964, and the Equal Opportunity Clause under Executive Order 11246 of September 24, 1965.

**RD 1942-6 “Letter of Intent to Meet Conditions”**

Applicants complete this form to indicate the intent to meet the conditions of the loan established previously by RUS. This information is necessary to determine whether the Agency should continue further processing of the loan application.

Comments on this information collection must be received by **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Title: Rural Alaska Village Grant Program (RAVG)

OMB Control Number: 0572-NEW.

Type of Request: New

Abstract: The Rural Alaska Village Grant (RAVG) Program is authorized under Section 306D of the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1926(d)), as amended. Governing regulations are currently codified in 7 CFR 1780.49. Under this program, the Secretary may make grants to the State of Alaska for the benefit of rural or Native Villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those Villages.

This is new collection associated with a proposed rule. RUS proposes to modify its existing regulations and establish a separate regulation for making grants to rural or Native Alaskan Villages under the Rural Alaska Village Grant (RAVG) Program. The existing RAVG regulation, 7 CFR 1780.49 will be relocated to its own section and modified to conform with the established streamlined processes. The collection of information from the public is necessary in order for RUS to identify projects eligible for RAVG grants.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2.05 hours per responses.

Estimated Number of Respondents: 25

Estimated Number of Total Annual Responses per Respondents: 415

Estimated Total Annual Burden on Respondents: 851

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis at (202) 720-7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**E-Government Act Compliance**

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**Catalog of Federal Domestic Assistance**

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.760. This catalog is available electronically through the free CFDA website on the Internet at <http://www.cfda.gov>. The print edition may be purchased by calling the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or ordering it online at <http://bookstore.gpo.gov>.

**Executive Order 12372**

All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR Part 3015, Subpart V, and RD Instruction 1940 J. In the case of grants made to

DEC and ANTHC, DEC and ANTHC will certify that the requirements listed in paragraphs a-e are included in their agreements with the rural or Native Villages.

### **Unfunded Mandates**

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

### **National Environmental Policy Act Certification**

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

### **Executive Order 13132, Federalism**

The policies contained in this proposed rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

### **Executive Order 13175**

Executive Order 13175 imposes requirements on RUS in the development of regulatory policies that have tribal implications or preempt tribal laws. RUS has determined that this proposed rule has a substantial direct

effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Therefore, in anticipation of the publication of this proposed rule, RUS focused its quarterly Tribal Consultation webinar and teleconference process during the summer of 2013 on the Rural Alaska Village Grant program. A pre-consultation briefing was held on June 20, 2013 to provide a thorough briefing of the Rural Alaska Village Grant program and the regulatory changes under consideration. This was followed by a Tribal Consultation webinar and teleconference on July 17, 2013. Input received by RUS through the Tribal Consultation process will be considered alongside comments to the proposed rule and utilized in drafting the next iteration of this rule. If a Tribe has questions about the Tribal Consultation process please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

## **Background**

The Rural Utilities Service, a Rural Development agency of the United States Department of Agriculture (RUS), works to improve the quality of life in rural America by providing investment capital, in the form of loans, loan guarantees, grants and technical assistance for the deployment of rural telecommunications, broadband, electric, water and environmental infrastructure. RUS loans, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS plays a

significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

### **Statutory Authorization**

The Rural Alaska Village Grant (RAVG) Program is authorized under Section 306D of the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1926(d)), as amended. Governing regulations are currently codified in 7 CFR 1780. Under this program, the Secretary may make grants to the State of Alaska for the benefit of rural or Native Villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those Villages. To be eligible to receive a grant under the RAVG program, the project must provide 25 percent in matching funds from the State of Alaska. The matching funds must come from non-Federal sources. The Secretary shall consult with the State of Alaska on a method of prioritizing the allocation of grants according to the needs of, and relative health and sanitation conditions in, each village. Not more than 2 percent of the amount made available for a fiscal year may be used by the State of Alaska for training and technical assistance programs relating to the operation and management of water and waste disposal services in rural and Native Villages. Appropriated funds shall be available until expended.

The U.S. Department of Health and Human Services, Indian Health Service (IHS) is authorized to construct sanitation and water supply facilities for native villages, and to enter into agreements and arrangements with public agencies, non-profit organizations

and the native villages to be served in furtherance of such projects, pursuant to Public Law 86-121, 42 U.S.C. Sec. 2004a.

ANTHC is authorized to provide statewide health services, including the construction of sanitation and water supply facilities, to Native beneficiaries in Alaska pursuant to Public Law 105-83, Sec. 325(a).

The Village Safe Water program is authorized under the Village Safe Water Act , Alaska Statute Title 46, Chapter 7 (AS 46.07), as amended.

### **RAVG History**

The State of Alaska recognized the need for adequate water and sewer systems through the passage of the Village Safe Water Act in 1970. The purpose of the Village Safe Water (VSW) program was to "establish a program designed to provide safe water and hygienic disposal facilities in the State of Alaska." There are several sources of grant funding that support water and waste projects in rural Alaska communities. The VSW program receives funding support from four primary sources: the USDA, the Environmental Protection Agency (EPA), the Department of Health and Human Services' Indian Health Services (IHS), and the State of Alaska. The RAVG program is administered by the Rural Development State Office. In recent years, Congressional set-asides have been provided to assist three groups of rural Americans who have great needs in improving their access to clean water. Alaska Natives through the RAVG program is one of those three groups. Through the RAVG set-aside, up to \$25 million a year has been provided since fiscal year (FY) 2006 to help the Alaska VSW program fund projects designed to improve public health and provide clean, safe drinking water in rural areas. The RAVG program is currently administered under 7 CFR 1780.49 and



is designed to provide up to 75 percent grant funding to rural Alaskan Villages that are trying to address a dire sanitation problem. Applicants must: (1) be a rural Alaska community that meets the definition of a village under Alaska law and whose population is 10,000 inhabitants or less; (2) have a median household income not exceeding 110 percent of the State nonmetropolitan median household income; and (3) obtain 25 percent of the project costs from State of Alaska or local contributions. When the State provides the 25 percent matching funds, it must come from nonfederal sources. If the State contributes to the project development costs, the project does not have to meet the construction requirements contained in 7 CFR 1780.

The RAVG program is coordinated with the Alaska Department of Environmental Conservation (DEC) that administers the VSW program, IHS, EPA, and Rural Utilities Service. Grants are awarded according to the needs of and relative health and sanitation conditions in each village.

On June 15, 2011, Rural Development signed a Memorandum of Understanding (MOU) with federal and state partners in Alaska that streamlines policies and procedures for the RAVG Program. The MOU is the result of an initiative launched by USDA in April of 2010 to improve program delivery and ensure that critical water and waste services are provided to rural Alaskan Villages. The inter-agency collaboration has produced results throughout the streamlining initiative. Between Fiscal Year (FY) 2009 and FY 2012, 53 construction grants have been funded providing service to 17,425 residents; 72 percent of the construction grants are complete or nearly complete and the remainders are underway. Also, between FY 2009 and FY 2012, 68 planning grants have been funded; 76 percent of the planning grants are complete or nearly complete and

the remainders are underway. In FY 2013, an additional 8 construction grants and 2 planning grants were awarded and will begin in the latter part of FY 2014. The total amount of cost overruns incurred since FY 2009 is \$4,132,391.

The goals of the MOU are to streamline the grant process, better align the regulations to the statute, and improve accountability within the program; all of which would ultimately address the dire sanitary conditions in Rural Alaskan Villages more effectively. Major changes to the existing process included:

(a) Revised application review. RAVG applications were processed pursuant to 7 CFR part 1780 which also covers the process for the direct loan and grant program. According to 7 U.S.C. 1926d, it is clear that this program is intended to be a grant program. Under the MOU, the twenty-five (25) percent match funding from the state of Alaska serves as applicant contribution and the Sanitary Deficiency System (SDS) categorization of the projects serves as the indicator of need for the project. Also, because this is a grant program, the credit elsewhere requirements in 7 CFR part 1780 and in Section 333(1)(A) of the Consolidated Farm and Rural Development Act (CONACT) do not apply.

(b) An updated two-stage funding process. A two-stage funding process was implemented where applications for planning grants are submitted in the first stage to allow for development of preliminary engineering reports (PER) and environmental reports (ER) related to proposed construction projects. Once the planning activities are completed, construction applications are entertained for those projects. Due to the dire conditions and unique economic conditions in rural Alaskan Villages, there are limited, or no, funds available from the applicant to complete the application process. Under the

MOU, applications for construction are filed after the planning grant is completed. As a result, the projects are well planned and RUS is able to fund projects with a high level of confidence. The result is the elimination of future cost overruns and incomplete projects that were experienced prior to the MOU.

(c) Bundled applications. Under the MOU, DEC and ANTHC are permitted to bundle applications and seek funding for multiple construction projects in multiple villages within a single application. The single application is called the master application. DEC and ANTHC are responsible for managing the projects and accounting for funds associated with every project under the master application. Although RUS obligates funds for multiple projects in a single obligation, measures are included in the MOU process to avoid issues previously experienced with the RAVG program and to account for funding as identified in the 2010 Office of the Inspector General (OIG) report. To address concerns raised by OIG in their audit, the following measures were implemented:

(a) Standardized construction information. A PER is required for each construction project proposed within a single application.

(b) Funds are designated within the master obligation for specific projects. Funds cannot be transferred from one project to another.

(c) Excess funds on projects are required to be returned to RUS. These funds are then returned to the RAVG funding account and used for other projects. This allows the RUS to extend the reach of the program and ensure that funds are used only for the purposes specified.

(d) Specific reporting requirements for DEC and ANTHC were also established in the MOU. These allow RUS to effectively account for funds and track the progress on projects funded.

(e) Streamlined environmental process. IHS has been designated as the lead agency for the environmental process because they have specialized expertise in this area and a local presence. For projects administered by ANTHC, IHS will be the lead agency for the environmental review process and required determinations applicable to various environmental laws and regulations. The ANTHC shall notify the funding agencies and the IHS if a change in the project or project's scope occurs which could change environmental determinations or could adversely impact the environment. The IHS shall bear no mitigation costs as it is not a funding agency for projects under the MOU. The environmental review process established in the MOU will result in a more streamlined review process minimizing duplication of efforts and provide clarity to roles and responsibilities of all concerned parties.

(f) Appointment of a dedicated program coordinator. Finally, to ensure success of the new process, RUS appointed a RAVG Program Coordinator who is solely dedicated to RAVG program delivery.

Ultimately the MOU has achieved the goal of streamlining the RAVG process. The program is working well under the MOU. Applications are being filed by ANTHC and DEC on behalf of villages. Those applications are being processed in a timely manner by RUS, and the State of Alaska continues to provide a 25 percent match of funds to projects. Most importantly, the construction of projects is occurring as proposed and the

quality of life is improving in rural Alaskan Villages. The following are two examples of how the process adopted under the MOU is achieving program results:

(1) Lower Kalskag, Alaska (Funding amount: \$6,879,155). The thought of having to haul a honey bucket, in winter temperatures that drop to -55 °F, is an unpleasant scenario. For some residents in the community of Lower Kalskag, and other rural Alaskan communities, this is a reality. The community of Lower Kalskag, Alaska is remotely located 350 miles west of Anchorage in a persistent poverty area. This small community has a population of around 280, and roughly 50 percent of its homes still lack adequate sanitation systems. The lack of adequate sanitation services is a dire health and safety issue faced daily by residents of this small, remote community. In those households, the individual residents must haul their waste from their homes in honey buckets (five gallon buckets), regardless of the temperature outside. The community of Lower Kalskag provides a glimpse of the progress and success of the MOU that was executed by RUS and its partners on June 15, 2011. Those partners, including the ANTHC, State of Alaska's Village Safe Water Program, and IHS, are essential in helping to provide rural Alaskan communities with safe and healthy sanitation systems. Under the MOU, a phased approach is being utilized to successfully get projects moving through to the construction phase. It is through that phased approach the community of Lower Kalskag has received service from the RAVG program. In Fiscal Year (FY) 2010, the community of Lower Kalskag received a grant from the RAVG program in the amount of \$869,193 to design proposed utility improvements. The design was finalized in early 2012 and allowed the ANTHC, on behalf of Lower Kalskag, to apply for a construction grant. In FY 2012, RUS awarded a construction grant in the amount of \$6,879,155 to construct

wastewater improvements that will serve 34 homes. Due to the phased approach, construction is anticipated to be underway by the spring of 2014. The effort to retire the use of honey buckets in this community, and other rural Alaskan communities, is no small feat. The result of those efforts and the grants provided by the RUS's RAVG program will help improve the health and safety of community members for generations to come.

(2) Pitkas Point, Alaska (Funded as both a design planning grant and two construction grants). Most Americans take their supply of sanitary water and effective wastewater disposal for granted. Water as close as the nearest faucet and easy access to restrooms is often taken for granted. Residents of Pitkas Point had to deal with unhealthy water and wastewater conditions that were staggering. They were in dire need of a water supply, water treatment facilities and wastewater treatment and collection facilities. Drinking water was hauled from local watering points, which did not meet safe drinking water standards. Wastewater was hauled in honey buckets along the same route children played on and where they traveled to and from school. RAVG assistance included a preplanning and development grant in FY 2009 in the amount of \$378,966 to design water distribution mains and sewer collection mains; and two construction grants were awarded in FY 2010 in the amount of \$6,891,750 and \$2,214,769 to construct core sanitation facilities and a piped water and wastewater system. The project became fully operational on September 8, 2011. Funding for this critical infrastructure project made it possible for the Pitkas Point community to construct a variety of basic water and waste needs for this rural community.

### **Purpose of this Proposed Rule**

The purpose of this proposed rule is to solicit comments on proposed modifications to the current RAVG regulation. Specifically, the modifications include:

- (1) Move regulation requirements from inclusion in 7 CFR 1780, to new part 7 CFR 1784;
- (2) Elimination of the RAVG regulatory language currently located in 7 CFR part 1780; and
- (3) Key streamlining measures which include:
  - (a) Revised application review so the evaluation process is based on need for grant only;
  - (b) A new application process that allows the state of Alaska to bundle applications from multiple villages into a single master application;
  - (c) Improved reporting and tracking measures to ensure accountability of funds and completion of projects in a timely fashion; and
  - (d) Establishing a single lead responsible for facilitating each applicable agencies' environmental and historic preservation review requirements for all projects.

### **Request for comments**

RUS invites interested parties including, but not limited to, Tribes, Rural or Native Villages in Alaska, Alaska Native Regional and Village Corporations, financial and lending institutions, trade associations, consumer groups and individuals to provide any information or analyses they believe to be relevant to the issues discussed in this proposed rule and to the implementation of the grant program. RUS is proposing to codify the process developed under the MOU and establish rules for the RAVG program

under the new part 7 CFR 1784. The proposed regulation includes all of the streamlined approaches and accountability measures from the MOU. RUS seeks comment on these changes.

### **List of Subjects**

Agriculture, Community development, Community facilities, Reporting and recordkeeping requirements, Rural areas, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Watersheds.

For the reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII of Title 7 of the Code of Federal Regulations by adding a new part 1784 to read as follows:

#### **PART 1784 – RURAL ALASKAN VILLAGE GRANTS**

##### **Subpart A – General Provisions**

###### **Sec.**

- 1784.1 Purpose
- 1784.2 Definitions
- 1784.3 Objective
- 1784.4-1784.7 [Reserved]

##### **Subpart B – Grant Requirements**

- 1784.8 Eligibility
- 1784.9 Grant Amount
- 1784.10 Eligible Grant Purposes
- 1784.11 Restrictions
- 1784.12-1784.15 [Reserved]

##### **Subpart C – Application Processing**

- 1784.16 Application for Master Plan grant
- 1784.17 Application for Pre-development grants
- 1784.18 Application for Construction grants
- 1784.19 Applications accepted from DEC or ANTHC
- 1784.20 Other forms and certifications
- 1784.21 Other requirements
- 1784.22 Lead Agency Environmental Review
- 1784.23-1784.25 [Reserved]



Subpart D – Grant Processing

- 1784.26 Planning, Development and Procurement
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Authority: 7 U.S.C. 1926d.

Subpart A. – General Provisions

§1784.1 Purpose.

This part sets forth the policies and procedures that will apply when the Rural Utilities Service (RUS) makes grants under the Rural Alaska Village Grant (RAVG) program to rural or Native Villages in Alaska. The grants will be provided directly to a rural or native village or jointly with either The State of Alaska, Department of Environmental Conservation (DEC) or The Alaska Native Tribal Health Consortium (ANTHC) for the benefit of rural or native villages in Alaska.

§1784.2 Definitions.

The following definitions apply to subparts A through E of this part.

ANTHC means the Alaska Native Tribal Health Consortium.

CONACT means the Consolidated Farm and Rural Development Act.

DEC means the State of Alaska, Department of Environmental Conservation.

Dire sanitation conditions means:

(1) Recurring instances of a waterborne communicable disease have been documented; or

(2) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies; or (3) An appropriate regulatory Agency of the State of Alaska determines that an imminent threat of a waterborne communicable disease is present.

Grant recipient means an applicant that has been awarded a Rural Alaskan Village Grant under this part.

IHS means the United States Department of Health and Human Services, Indian Health Service.

RAVG means Rural Alaskan Village Grant, a grant awarded by RUS, DEC, and/or ANTHC to a grant recipient under this part.

Rural or Native Villages in Alaska means a rural community or Native village in Alaska which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the U.S. Census American Community Survey.

RD means Rural Development, a federal agency mission area delivering the United States Department of Agriculture's programs to rural communities.

Recipient community means a community that has been awarded a grant under this part.

RUS means the Rural Utilities Service, a federal agency delivering the United States Department of Agriculture's rural utilities programs.

Short-lived assets means repair and replacement items expended each year that are not included in the annual Operational and Maintenance expenses as annual repair and maintenance.

Statewide nonmetropolitan median household income (SNMHI) means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

USDA means the United States Department of Agriculture.

VSW means Village Safe Water Program authorized under the Village Safe Water Act, Alaska Statute Title 46, Chapter 7 (AS 46.07).

§1784.3 Objective.

The objective of the RAVG Program is to assist the residents of rural or Native Villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those Villages through removal of dire sanitation conditions.

§1784.4-1784.7 [Reserved]

Subpart B – Grant Requirements

§1784.8 Eligibility.

(a) Grants may be made to the following eligible applicants:

(1) A rural or native village in Alaska; and/or

(2) DEC on behalf of one or more rural or native villages in Alaska; or

(3) ANTHC on behalf of one or more rural or native villages in Alaska.

(b) Grants made to DEC or ANTHC may be obligated through a master letter of conditions for more than one rural or native village in Alaska; however, DEC or ANTHC together with each individual rural or native village beneficiary shall execute a grant agreement on a project by project basis. Expenditures for projects will be based on specific scope and be requested on a project by project basis.

(c) For grants proposed to be administered directly by a community, the responsibility to meet the requirements outlined in this part will be met by the community. RUS will be the lead agency on direct administration projects.

(d) The median household income of the rural or native village cannot exceed 110 percent of the statewide nonmetropolitan household income, according to US Census American Community Survey. Alaska census communities considered to be high cost isolated areas or “off the road systems” (i.e. communities that cannot be accessed by roads) may utilize up to 150 percent of SNMHI.

(e) A dire sanitation condition as defined in §1784.2 must exist in the village served by the proposed project. For those projects identified under (1) and (3) of the dire sanitation definition, a notice of violation, consent order or other enforcement action from the appropriate regulatory agency must be provided to document the dire sanitation condition.

(f) In order for an eligible applicant to receive a grant under the Rural Alaska Village Grant program, the State of Alaska shall provide 25 percent in matching funds from non-Federal sources.

(g) In processing grants through DEC and ANTHC, a public meeting must be held to inform the general public regarding the development of any proposed project. Documentation of the public meeting must be received with construction applications.

(1) A notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(2) For projects where there are no newspapers of general circulation, a posting of the notice in a community building (post office, washeteria, clinic, etc.) frequented by village residents may be used to meet the requirement. This alternative form of notice has been authorized by the RUS Administrator.

#### §1784.9 Grant Amount.

Grants will be made for up to 75 percent of the project development and/or construction costs. Pursuant to Section 306 D of the CONACT, the State of Alaska shall provide 25 percent in matching funds from non-Federal sources.

#### §1784.10 Eligible Grant Purposes.

Grant funds may be used for the following purposes:

(a) To pay reasonable costs associated with providing potable water or waste disposal services to residents of rural or native villages in Alaska.

(b) To pay reasonable costs associated with the use of a recipient community's equipment during construction. (i.e. maintenance, minor repairs, and operational costs). A cost accounting system that is accurate to track expenses must be in place. Use of ANTHC or State of Alaska equipment fleet rental costs will also be eligible. RUS concurrence in the allocation method is required.

(1) Reasonable costs include construction, master planning, predevelopment costs (including engineering, design, and rights-of-way establishment), and technical assistance as further defined below:

(i) Master planning. Grants can be made specifically for Master planning costs associated with the prioritization process.

(ii) Pre-Development. Grants can be made for pre-development costs such as preliminary engineering, environmental, application development, review and establishment of rights-of-way and easement, and full construction design for up to \$1,000,000 for each eligible village. Prior to approving additional pre-development costs, a preliminary engineering report (PER) and/or approved PER like document, such as the Cooperative Project Agreement and supplemental documents from ANTHC and an environmental report shall be reviewed and concurred by RUS, DEC, ANTHC, and IHS.

(iii) Training and Technical Assistance. Not more than 2 percent of the funding made available each fiscal year may be used by the State of Alaska for training and technical assistance programs relating to the operation and management of water and waste disposal services in rural and native villages. Grants for this purpose will be processed in accordance with 7 CFR Part 1775.

(c) Individual Installations:

(1) Individual service installation relates to residential homes only and does not include public facilities and/or commercial facilities. The only exception to serving a public facility is when the facility is necessary for the successful operation and maintenance of the water or sanitation system (i.e. the facility utilized for accepting utility payments and/or holding public meetings on the utility system).

(2) Individual home installations, including wells, septic system, flush tank & haul, in-house plumbing, etc., may be provided. The following guidelines must be followed for individual installations. A certification will be required with the application that provides documentation of the following:

(i) The residents are unable to afford to make the improvements on their own.

(ii) An agreement outlining the installation, operation, and maintenance of facilities must be in place.

(iii) An adequate method for denying service in the event of non-payment of user fees.

(iv) All residents of the community are treated equally.

(v) The improvements provided are reasonable and modest.

(vi) Legal authority (i.e. easements) is obtained to construct these improvements.

(vii) Documentation must be provided to RUS indicating the quantity and quality of the individual installations that may be developed; cost effectiveness of the individual

facility compared with initial and long term user costs on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit of regulatory agency requirements.

§1784.11 Restrictions.

Grant funds may not be used to:

(a) Pay any annual recurring costs that are considered to be operational expenses of a facility.

(b) Pay basic/rental fee or depreciation for the use of the recipient community's equipment.

(c) Purchase existing systems.

(d) Pay for items not associated with Rural Utilities Service's approved scope of work. This includes projects developed from other funding sources.

§1784.12-1784.15 [Reserved]

Subpart C – Application Processing

§1784.16 Application for master plan grant.

(a) DEC and ANTHC utilize the National Indian Health Service, Sanitation Deficiency System (SDS) database as a comprehensive source of rural sanitation needs in



Alaska. The database provides an inventory of the sanitation deficiencies including water, sewer, and solid waste facilities for existing homes. The sanitation deficiencies data is updated annually by DEC and ANTHC in consultation with the respective rural or native villages. The SDS database is utilized under the RAVG program to help prioritize applications under the Village Safe Water Program.

(b) In order to be considered for funding, projects must be included in a sanitation facility Master Plan for the community which has been approved by DEC or ANTHC and RUS.

(c) Entities identified in §1784.8 of this part may submit a completed Standard Form 424 to apply for funding to establish a Master Plan for a rural or Native village.

§1784.17 Application for pre-development grants.

(a) A prioritized list of projects will be developed each year by RUS, DEC, and ANTHC applying prioritization criteria to the sanitation needs database. Prioritization criteria established by the RUS, DEC, ANTHC, and IHS will be based, at a minimum, on relative health impacts, drinking water and wastewater regulatory requirements, the sanitation conditions in each community and project readiness. The Village Safe Water Program process and associated prioritization criteria will be used to prioritize projects and place them on a priority list. The process will be reviewed and approved by RUS, DEC, ANTHC, and IHS. Projects will be funded from the priority list as they meet established planning, design, and construction requirements, subject to available funding.

(b) Funding for pre-development grants will be allocated by USDA, DEC, and ANTHC according to the prioritized list.

(c) Entities identified in §1784.8 of this part may submit a completed Standard Form 424 to apply for funding for pre-development costs. Pre-development costs are described in §1784.10 (b)(2)(ii) of this part.

(d) Projects submitted for design only under the pre-development grants, must have RUS approval of the master plan prior to consideration for funding.

§1784.18 Application for construction grants.

(a) Funding for construction grants will be allocated annually by USDA, DEC, and ANTHC according to the prioritization list described in §1784.17(a) of this part.

(b) An application for a construction grant shall include:

(1) Completed Standard Form 424, Standard Form 424C and Standard Form 424D. Current versions of these forms may be found at Grants.gov.

(2) Preliminary Engineering Report, Environmental Report, or approved PER like document, including ANTHC's Cooperative Project Agreement and associated supplemental attachments;

(3) Population and median household income of the area to be served;

(4) Description of the project; and

(5) Approved business plan, including resolution adopting the plan, for the recipient community. The business plan will outline the proposed operation and management costs, rate structures, short-lived asset schedule and associated materials.

§1784.19 Applications from DEC or ANTHC.

(a) In cases where applications are accepted from DEC or ANTHC, one master application may be submitted covering all rural or native villages to be funded, however, each individual project will be broken out and (for construction grants) each will require its own PER, or PER like document and Environmental Report.

(b) They will be processed as separate projects with individual grant agreements, as appropriate.

(c) Expenditures for projects will be based on specific scope and be requested on a project by project basis.

(d) Funding amounts, as indicated in each grant agreement and letter of conditions, will be for the approved scope of work.

§1784.20 Other forms and certifications.

(a) Referenced bulletins, instructions and forms are for use in administering grants made under this part and are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, D.C. 20250-1500.

(b) Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application:

(1) Form RD 400-1, Equal Opportunity Agreement;

(2) Form RD 400-4, Assurance Agreement;

(3) Form AD 1047, Certification Regarding Debarment, Suspension and other Responsibility Matters;

(4) Form AD 1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions;

(5) Form AD 1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I for Grantees Other Than Individuals;

(6) RUS Form 266, Compliance Assurance form – Civil Rights Compliance;

(7) Standard Form LLL, Disclosure of Lobbying Activities;

(8) RD Instruction 1940-Q, Exhibit A-1, Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(9) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

(c) In the case of grants made to DEC and ANTHC, DEC and ANTHC will certify that the above requirements are included in their agreements with the Villages. The certification and forms listed above must be provided from DEC and ANTHC on an annual basis for utilization in proposed applications.

(d) When favorable action is not taken on an application, the applicant will be notified in writing by the Rural Development State Program Official of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by the Agency may be requested by the applicant in accordance with 7 CFR Part 11.

(e) When favorable action is taken on an application, the applicant will be notified by a letter which establishes conditions that must be understood and agreed to before further consideration may be given to the application. In cases where a master application is submitted by DEC or ANTHC, the letter of conditions will include all projects, and their funding amounts, included in the master application on which favorable action will be taken. The letter of conditions does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. The grant will be considered approved on the date a signed copy of Form RD 1940-1, Request for Obligation of Funds, is mailed to the applicant.

§1784.21 Other requirements.

Other Federal statutes and regulations are applicable to grants awarded under this part. These include but are not limited to:

(a) 7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

(b) 7 CFR part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.

(c) 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 7 CFR part 1794, RUS Implementation of the National Environmental Policy Act.

(e) 7 CFR part 1901, subpart E—Civil Rights Compliance Requirements.

(f) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(g) 7 CFR part 3016—USDA Implementation of OMB Circular Nos. A-102 and A-97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(h) 7 CFR part 3018— Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 7 CFR part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(j) 7 CFR part 3021, as amended—Government-wide Debarment and Suspension (Non-procurement); Government-wide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(k) 7 CFR part 3052—USDA implementation of OMB Circular No. A-133 regarding audits of institutions of higher education and other nonprofit institutions.

(l) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs.

(m) Floodplains. The agencies follow the eight-step decision-making process referenced in Section 2(a) of Executive Order 11988, Floodplain Management, when undertaking actions located in floodplains. Pursuant to E. O. 11988, the IHS uses a Class Review process to exclude certain actions from further review under the eight-step process. For all actions that do not qualify for IHS Class Review, the eight-step process shall be completed. All practicable measures to minimize development in floodplains and reduce the risk of human safety, health, and welfare shall be followed, including elevating a new water or wastewater facility at least one foot above the base flood elevation as determined by the Army Corp of Engineers or other qualified survey. If an area has been designated by the Federal Emergency Management Agency mapping, flood insurance shall be required for facilities located in flood plains. If a community is not participating in the National Flood Insurance Program, this requirement does not apply.

(n) Project planning, including engineering and environmental reports, to the maximum extent feasible, must address all water and/or waste disposal needs for a community in a coordinated manner with other community development projects and take into consideration information presented in available community strategic and comprehensive plans. Any reports or designs completed with funds must be completed in accordance with sound engineering practices and USDA regulations, including environmental instruction 7 CFR Part 1794.

§1784.22 Lead Agency Environmental Review.

(a) The Agency designated as the lead agency for the purposes of this grant program, will fulfill and agree to be responsible for complying with lead agency requirements for:

(1) National Environmental Policy Act (NEPA) as outlined in 40 CFR 1501.5,  
Lead agencies;

(2) Section 106 review process as outlined in 36 CFR Part 800.2(a)(2) Lead  
Federal agency; and

(3) Section 7 of the Endangered Species Act as outlined in 50 CFR 402.07,  
Designation of lead agency.

(b) All environmental findings and determinations made by the lead agency represent those of the cooperating agencies and will be completed in accordance with the procedures outlined in this section.

(c) RUS will, to the extent possible and in accordance with 40 CFR 1506.2 and 7 CFR 1794.14, actively participate with DEC, IHS, and ANTHC to cooperatively or



jointly prepare environmental documents so that one document will comply with all applicable laws.

(d) For projects administered by DEC and ANTHC, RUS agrees to participate as a cooperating agency in accordance with 40 CFR 1501.6 and 7 CFR 1794.14 and relies upon those agencies' procedures for implementing NEPA procedures as further described below.

(e) The lead agency will indicate that RUS is a cooperating agency in all NEPA-related notices published for the proposed action.

(f) A construction grant may not be approved until all environmental findings and determinations have been made according to the following:

(1) Rural Development Lead Agency. If RUS is the lead agency the environmental review process, including all findings and determinations, will be completed in accordance with 7 CFR 1794.

(2) DEC Lead Agency. In the event DEC is the lead agency, the environmental review process, including all findings and determinations will be completed in accordance with the procedures outlined in the RAVG Environmental Review Process in this section 1784.22.

(3) IHS Lead Agency. For projects administered by ANTHC, IHS will be the lead agency for the environmental review process, including all findings and determinations. The environmental review process, including all findings and determinations will be completed in accordance with the Department of Health and

Human Services policies and procedures in General Administration Manual, Part 30, the Council on Environmental Quality regulations at 40 CFR 1500-1508 and with procedures published by IHS in the Federal Register on March 22, 1993 at 58 FR15284. The ANTHC shall notify the funding agencies and the IHS if a change in the project or project scope occurs which could change any previously prepared environmental findings or determinations or could adversely impact the environment. In the event of an unanticipated discovery of a historic property or other environmental resource, the ANTHC shall stop construction activity in the area of the discovery and notify the appropriate authority and the IHS. Mitigation options resulting from unanticipated discoveries, including but not limited to changes in project scope or cancellation of the project will be evaluated by the funding agencies in collaboration with the ANTHC and IHS. If appropriate and necessary, mitigation plans will be negotiated and approved by all parties. When the funding agencies have approved a mitigation plan and IHS has reaffirmed its environmental review process, including all findings review and determinations, the ANTHC will be authorized to initiate the agreed to mitigation plan. The IHS shall bear no mitigation costs as it is not a funding agency for projects under 7 CFR 1784.

(g) RUS will have an opportunity to review the IHS or DEC environmental review documents, including all findings and determinations to ensure consistency with this part and agency procedures. Where an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required by the lead agency's environmental policies and procedures, the lead agency will ensure that the scope and content of the EA or EIS satisfies the statutory and regulatory requirements applicable to RUS. Where an

EA and EIS is not required under the applicable lead agencies' procedures for implementing NEPA, the review by RUS will be limited to ensure that the applicable lead agencies' procedures were followed.

(h) The Section 106, National Historic Preservation Act review requirements completed for ANTHC administered projects will be carried out in accordance with RAVG Section 106 Process.

§1784.23-25 [Reserved]

#### Subpart D – Grant Processing

#### §1784.26 Planning Development and Procurement.

(a) If RUS is the lead agency and will provide oversight for the project, a certification should be obtained from the State agency, or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will be in compliance with requirements of the Safe Drinking Water Act and/or Clean Water Act and the applicable requirements of 7 CFR parts 3015, 3016 and 3019.

(b) Applicants that will bid and construct a project in phases, must provide assurance that the full scope of each specific phase of the project will be functional. In the event that the actual cost is anticipated to exceed the funding originally allocated for the project, all potential options will be reviewed and considered, including but not limited to acquiring additional funds or a reduction in project scope. RUS, ANTHC, and VSW will ensure that funded scope items are functional when all funds have been disbursed.

§1784.27 Grant Closing and Disbursement of Funds.

(a) The Water and Waste Grant Agreements for rural and native villages in Alaska, or other approved form(s) will be executed by all applicants. To view all forms and agreements, refer to the USDA RUS Water and Environmental Programs web site.

(b) Grant funds will be distributed from the Treasury at the time they are actually needed by the applicant using multiple advances. Instructions regarding disbursement of funds can be found in the Letter of Conditions.

(c) If there is a significant reduction in project costs, the applicant's funding needs will be reassessed. Decreases in RUS funds will be based on revised project costs and current number of users, however, other factors including RUS regulations used at the time of grant approval will remain the same. Obligated grant funds not needed to complete the proposed project will be deobligated. In such cases applicable forms, the letter of conditions, and other items will be revised.

§ 1784.28 Grantee Accounting Methods, Management Reporting and Audits.

(a) All Agency grantees will follow the reporting requirements as outlined in 7 CFR 1780.47.

(b) Other reporting requirements are as follows:

(1) During the construction period, for the reporting of expenses incurred for projects under this part, the party responsible for the administration of the project (DEC, ANTHC, or community) will provide an audit report in accordance with §1784.28 (which includes GAGAS and OMB Circular A-133 requirements).

(2) For DEC and ANTHC projects, a supplemental report will be provided to the external independent CPA auditing the organization. The report will support the official figure indicated for CFDA 10.760 in the Schedule of Expenditure of Federal Awards. The report must provide details on the amount of expenses and specific communities for which expenses were incurred. This report must also be provided to RUS.

(3) After the construction period and for the life of the facility, the recipient community will be responsible to meet the requirements outlined in 7 CFR parts 3015, 3016, and 3019 and 7 CFR 1784.28, paragraphs a through d, herein. These requirements include administration and record keeping requirements along with CPA audit report and report requirements. These requirements must be outlined in funding documents from RUS, ANTHC, and VSW and in agreements with the recipient communities.

(4) The requirements found in 7 CFR parts 3015, 3016 and 3019 shall apply to all grants made under the RAVG program and shall be set forth in the respective grant agreement where required.

§1784.29 Grant servicing and accountability.

- a. Grants will be serviced in accordance with 7 CFR Part 1782.
- b. RUS reserves the right to request and review project files from grantees at any time.

§1784.30 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this part. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in Subpart B of this section.

§1784.31 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's best interest. Additionally, in individual cases where a proposed project does not meet the definition of "Dire sanitation condition" in Section 1784.2, but an applicant is able to satisfactorily demonstrate to the Administrator of RUS that a water or sewer system is deficient and negatively impacts the health or safety of the community, the Administrator of RUS may consider funding under this Rule.

§1784.32-34 [Reserved]

Subpart E – Design Bidding, Contracting, Constructing, and Inspections

§1784.35 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. These procedures do not relieve the owner of

the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as an applicant, or grantee. For projects administered by eligible applicants identified in 1784.8(a)(2) or (3), 1784.36 of this subpart will be followed. For eligible applicants identified in 1784.8(a)(1), the requirements outlined in 1784.37 will be followed.

§1784.36 Procurement by Applicants Eligible Under 1784.8(a)(2) and (3).

(a) For applicants eligible under 1784.8(a)(2) and (3), contracting and procurement activities will follow DEC or ANTHC policies, procedures and methods. DEC and ANTHC's practices will be based on Uniform Administrative Requirements for federal grants and OMB requirements as defined by applicable OMB Circulars. Procurement procedures shall not restrict or eliminate open and free competition. In specifying materials, DEC and ANTHC will consider all materials normally suitable for the project based on sound engineering practices and project requirements.

(b) Contracts for construction or repairs must contain the following provisions:

(1) To include in all contracts for construction or repair a provision for compliance with the Copeland ``Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3).

(2) To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414 ) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution

Control Act and all regulations and guidelines issued there under after the award of the contract.

§1784.37 Procurement by Applicants Eligible Under 1784.8(a)(1).

For grants proposed to be administered directly by applicants eligible under 1784.8(a)(1), the requirements outlined in §1780 subpart C will be met by those eligible applicants with the exception of the following requirements:

- (a) Preliminary engineering reports and Environmental Reports (§1780.55). Refer to the requirements of this subpart and subpart C 1784.21(e).
- (b) Metering devices in §1780.57(m).
- (c) Utility Purchase Contracts in §1780.62.
- (d) Sewage treatment and bulk water sales contracts in §1780.63.

§1784.3 – 1784.99 [Reserved].

Dated: November 8, 2013.

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John Charles Padalino  
Administrator  
Rural Utilities Service

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